

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.689 OF 2001

Dated:11.12.2017

Between:

Khasim Baig (died) and others

.. Petitioners

And

Kaki Venkataswamy Babu,
S/o. Venkataramanayya,
Aged about 40 years,
Business, resident of Main Bazaar,
Eluru, West Godavari District and another

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**CIVIL REVISION PETITION No.689 OF 2001****ORDER:**

Heard Sri T.S.Anand, learned counsel for the petitioners and Sri K.Ramakanth Reddy, learned counsel for the respondents. There is no representation for the A.P.Wakf Board (Telangana Wakf Board)

2. This revision is filed against decision in R.C.A.No.10 of 1983.

3. The facts leading to filing of this revision unfold as under:

3.1. According to the petitioners, lease was granted by way of registered lease deed dated 31.12.1970 in favour of the respondents on the suit schedule property. Initially, the rent fixed was Rs.45/- and later enhanced to Rs.80/-. The respondents defaulted in payment of rents. R.C.C.No.16 of 1978 was filed under Section 10(2)(iii) of A.P.Buildings (Lease, Rent and Eviction) Control Act ('the Act'), before the Rent Controller, praying to grant eviction on the ground of wilful default and requiring property for personal occupation.

3.2. Though respondents accepted that they entered into the lease with petitioners, they contended that the property on which the lease was granted is Takia property and was not intended for the personal benefit of the petitioners. The

respondents, therefore, raised the objection on maintainability of the R.C.C.No.16 of 1978 as the schedule property is a Wakf property and therefore, the jurisdiction of Rent Controller is ousted in view of the provisions of the Andhra Pradesh Wakf Act, 1995 ('Wakf Act').

3.3. The plea of the respondents was accepted by the Rent Controller and dismissed the R.C.C.No.16 of 1978. Aggrieved thereby, the petitioners herein preferred R.C.A.No.10 of 1983. The said R.C.A. was also dismissed holding that as the schedule property is a Wakf property, the Rent Controller has no jurisdiction to adjudicate the issue. Aggrieved thereby, petitioners filed CRP.No.3267 of 1994. By order dated 01.12.1999, the said CRP was disposed of remitting the matter to the Appellate Authority for consideration of R.C.A.No.10 of 1983 in the light of the observations made in the CRP. This Court directed the appellate court to consider the issue whether the schedule property is Wakf property and whether the Rent Controller has jurisdiction to adjudicate.

3.4. On remand, the Appellate Authority held that the schedule property is Wakf property and therefore, the Rent Controller has no jurisdiction, in view of the provisions of Wakf Act, more particularly, Sections 6, 83 and 85. The said decision is challenged in this revision.

4.1. Learned counsel for the petitioners contends that the Appellate Authority erred in going into the title dispute in a

rent control case. As held by this Court in **D.Suresh Kumar vs. Mohd. Dastagiri¹** and **Mohd. Shafi v. Hafeez Mohammed²**, it is not permissible for the Rent Controller/Appellate Authority to go into these issues.

4.2. He further contended, by placing reliance on decision of this Court in **Rajendra Prasad v. Narsing Prasad and another³**, the Rent Controller has no competence to decide the title of the property. According to the learned counsel, in view of the decision of this Court in **Rajendra Prasad's case (referred supra)**, the earlier direction issued by this Court in CRP.No.3267 of 1994 is not valid and therefore, the decision arrived at by the Rent Controller as well as the Appellate Authority is not sustainable and on that ground alone, the order is liable to be set aside.

4.3. He would further submit that petitioners are owners of the suit schedule property.

4.4. He would further submit that in a rent control case, the issue for consideration is whether lessee/tenant violated terms of lease/rent agreement. When once the respondents accept the tenancy, it is not permissible to them to challenge the status of ownership.

¹ 2013 (6) ALT 802

² 2008 (2) ALD 49

³ 2005 (4) ALD 45

4.5. Even assuming that petitioners are trustees of schedule property, they are entitled to file rent control case in that capacity.

5.1. Learned counsel appearing for the respondents, Sri Ramakanth Reddy submits that petitioners never claimed as owners of schedule property. In the lease deed relied by petitioners, they claimed as trustees. In O.S.No.661 of 1982, in the Court of I Additional District Munsiff, Eluru, the claim of the petitioners herein that they are Mutavallis was negatived. Learned counsel, therefore, contended that even the petitioners cannot be treated as trustees of the subject property. He therefore submits that the Appellate Authority has arrived at correct conclusion and does not warrant any interference.

5.2. He further submits that the subject property is Gazetted as per Wakf Act (Ex.X-1) describing the status of property as 'Takia', which is therefore a Wakf property. Unless and until the petitioners challenge the description of the property as Wakf property, it is not open to them to prosecute litigation on the said property.

5.3. Learned counsel for the respondents placed reliance on following decisions in support of his contention that Rent Controller has no jurisdiction and any person claiming interest on the property, which is *prima facie* classified as

Wakf property, has to approach the Wakf Tribunal established under the Act:

1. ***Chowk Mosque, rep. by its Mutavalli v. P.V.H.Maqbul Basha and others***⁴.
2. ***M.Bikshapathi v. Government of Andhra Pradesh and others***⁵.
3. ***Allauddin Charities and Zakath Wakf v. Hameed Ali and others***⁶.

6. The only issue for consideration in the present revision is whether the Rent Controller and the Appellate Authority erred in holding schedule property as Wakf property and that they are ousted of jurisdiction to deal with the rent control dispute?

7. Against earlier decision of Appellate Authority, CRP.No.3267 of 1994 was filed. Order in C.R.P. would show that it was contended before this Court that subject property is not Wakf property and that the Appellate Authority has not properly evaluated evidence on record and erroneously erred in declaring the subject property as Wakf property. It was also contended that even assuming that Takia property falls in T.S.No.873, the entire land covered in T.S.No.873 does not belong to Takia property as it is a vast extent and even in the Ex.A-3 Register of Resurvey and Resettlement, it was mentioned as private land. On consideration of respective

⁴ 1999 (1) ALT 310

⁵ 2002 (2) ALT 530 (D.B.)

⁶ 2002 (2) ALT 534 (D.B.)

submissions matter was remanded to Appellate Authority for consideration afresh in the light of directions issued therein.

8. At this stage, it is appropriate to note the observations and directions of this Court. They read as under:

“But the question is whether the property is Wakf property. When it is declared as Wakf property then the Rent Controller loses jurisdiction and the parties are required to establish their respective claims before the Tribunal constituted under the relevant Acts. Under these circumstances, I am satisfied that the appellate court has not considered the matter in proper perspective and the matter requires to be re-considered by the appellate Court taking into consideration of Ex.X-1, Ex.X-2 and Ex.A-3 and other documents that may be filed by the parties in this regard.

Under these circumstances, the order of the Appellate Court is set aside and the matter is remanded to the appellate court for fresh consideration. It is open for the parties to adduce evidence, if they so choose, subject to the relevancy and admissibility. If the appellate court comes to a conclusion that it is not Wakf property then it is required to consider on the merits of the case whether the finding of the Rent Controller that the bonafide requirement and the wilful default was not established was correct or not. However, if it comes to a conclusion that it is a Wakf property, the appellate court need not go into the other aspects of bonafide requirement and wilful default as it ousts the jurisdiction of Rent

Control Tribunal. This exercise shall be done within a period of three months from the date of receipt of a copy of this order. No order as to costs.”

9. On remand, the Appellate Authority formulated the following two points for consideration:

1. “Whether the schedule property is a wakf property?
2. Whether the schedule property is not a wakf property, it is to be verified whether the findings of the Rent Controller on the points of wilful default and bonafide requirement is correct and whether they are liable to be set aside in view of the contentions raised by the appellants?”

10. On thorough evaluation of evidence on record, the Appellate Authority held as under:

“The appellants/petitioners are not able to produce any iota of evidence that the plaint schedule property is their ancestral property. The evidence of R.W.3 coupled with Exs.X-1 and X-2 clarifies that the schedule property is a Wakf property. On the other hand that the suits filed by the appellants are dismissed as seen from Exs.B-11 and B-12 in which the present appellants claims are dismissed as Mutavallis. On the other hand, Ex.A-2 lease deed also clear that the present appellants are only termed as trustees of the petition schedule properties and they were not termed as owners of the schedule property and that Ex.A-2 itself disentitle the appellants to claim as owners.

So, in the foregoing discussion, I am of the clear opinion that the petition schedule property is only a Wakf property since the appellants have miserably failed to show that they are the owners of the petition schedule property. So, in the above circumstances, the Rent Control Court has no jurisdiction to entertain the petition as it was clearly observed by the Hon'ble High Court."

11. The material placed on record, as assessed by the Appellate Authority, disclose that the schedule property is not private property. As seen from the extracted portion of the order of the Appellate Authority, the stand of the petitioners that the schedule property is not Wakf property and they are the trustees of the Wakf property was negatived in clear and categorical terms. No other material is placed on record to dislodge clear finding arrived at by the Appellate Authority.

12. Once a declaration is given that the subject property is a Wakf property, the jurisdiction of the Rent Controller is ousted. In terms of the provision contained in Section 83 of Wakf Act, all matters concerning the status of a property as belonging to Wakf property and incidental thereto have to be adjudicated before duly constituted Wakf Tribunal. Having regard to statutory mandate and directions issued by this Court while remanding the matter to Appellate Authority, the Appellate Authority was required to go into the status of property to find out *prima facie* whether the property is

classified as Wakf property. Further, once the Rent Controller and the Appellate Authority have arrived at the decision that subject property is a Wakf property, they do not have the jurisdiction to go into the merits of the contentions urged.

13. This is a finding of fact arrived at by Appellate Authority on thorough evaluation of evidence on record. It is the consistent opinion of Rent Controller and Appellate Authority that schedule property is Wakf property. Even before matter was remanded to Appellate Authority by this court at the initial stage also, the Appellate Authority upheld the decision of Rent Controller.

14. Learned counsel for the petitioners would contend that in view of the principle of law laid down by this Court in ***Mohd. Shafi's case*** and ***Rajendra Prasad's case*** (referred supra), the Rent Controller or Appellate Authority have no competence to adjudicate title dispute and therefore, the finding recorded by the Rent Controller holding the subject property as belonging to Wakf is erroneous.

15. I cannot appreciate the said contention for two reasons as noted here under:

1. Petitioner herein filed C.R.P.No.3267 of 1994. On elaborate consideration of respective submissions, the court having noticed that certain aspects were not considered by the Appellate Authority, remanded the matter for reconsideration of appeal afresh. This

Court directed Appellate Authority also to specifically consider whether the subject property is a Wakf property and also held that if it is declared as Wakf property, the Rent Controller or the Appellate Authority has no jurisdiction to adjudicate the grievance under the Rent Control Act. Having sought such a direction, it is not open to the petitioners to turn around and claim now, by referring to subsequent decisions of this Court to contend that the Rent Controller or the Appellate Authority ought not have gone into the status of the subject property.

2. The Rent Controller and the Appellate Authority have limited jurisdiction that is to consider the claim of parties before the Rent Controller as to whether the terms of lease granted are violated and whether lease holder defaulted in payment of rents and incidental issues flowing therefrom. In order to exercise jurisdiction by the Rent Controller, he has to satisfy himself that he is competent to resolve the dispute and that no other statutory provision oust its jurisdiction. If a property is treated as a Wakf property, the claims concerning said property are governed by the provisions of Wakf Act. Under the Wakf Act, a separate Tribunal is established, which has to go into all the issues concerning a property claimed as Wakf property or a dispute regarding the status of the property as Wakf property.

16. The findings recorded by the Appellate Authority, on remand, are only for the purpose of considering as to whether it has jurisdiction to adjudicate the dispute. The findings so recorded do not amount to deciding the title of the property and does not take away the right of any individual to claim

title to the property by independently working out remedy as available under common law. Therefore, the contention urged by the learned counsel is stated to be rejected.

17. The jurisdiction of this Court in a revision filed against the decision of Appellate Authority under the Act is limited. The court is required to consider whether there was error of jurisdiction, that the Rent Controller or the Appellate Authority entertained an erroneous claim and whether the decision is perverse. Only if the court is satisfied on these parameters, the court can interfere with the decision of the Rent Controller/Appellate Authority. The court cannot sit as an Appellate Court and re-appreciate the evidence on record and to record different findings from the findings recorded by the Rent Controller/Appellate Authority. In the instant case, the appellate authority has not gone into the merits of the contentions urged, but upheld the decision of the Rent Controller on the maintainability of Rent Control case.

18. The document (Ex.A2), by which lease was claimed to have been granted itself describes the petitioners as the Dharmakarta (Trustee) of the subject property. The Gazette publication (Ex.X-1) describes the property as Wakf property - Takia. The Gazette Notification is not under challenge. Petitioners herein filed O.S.No.661 of 1982 (Ex.X5) on the file of I Additional District Munsiff at Eluru, praying to grant mandatory injunction directing the defendants

1 and 2 to remove lime grinding stones, sheds and their accessories from plaint schedule property. The trial court framed five issues for trial. Issue No.2 framed by the trial court reads, 'whether the plaintiff have title and ownership over the plaint schedule property'. The trial court held that plaintiffs miserably failed to prove their title to the suit schedule property and held the issue against plaintiffs. Ex.B11 is the judgment in O.S.No.156 of 1960. Some of the petitioners herein were the plaintiffs including Khasim Baig. The suit was filed to grant mandatory injunction directing the defendants therein to demolish the constructions made. One of the issues framed by the trial court was 'whether plaintiffs are entitled to act as Mutavallis'. The trial court held plaintiffs are not entitled to act as Mutavallis.

19. In the light of findings recorded by the competent civil court earlier, referred to above, which findings are relied upon by the Appellate Authority, it cannot be said that the Appellate Authority grossly erred in holding subject property as Wakf property.

20. In the facts of this case, it cannot be said that the finding arrived at by the Rent Controller/Appellate Authority is erroneous, not supported by the material on record and cannot be called as perverse finding for this Court to interfere on the said findings concurrently arrived by the Rent Controller and Appellate Authority. Thus, no case is made

out by the petitioners to interdict well considered decision of the Appellate Authority.

21. In the result, this civil revision petition is dismissed. It is needless to observe that the findings recorded by the Appellate Authority, confirmed by this Court, are only for the purpose of deciding the jurisdiction under the Act and it is always open to the parties to work out their remedies available under Civil law or under the Wakf Act, as may be advised and it does not take away the right of the parties to establish their title to subject properties before appropriate court/forum. Miscellaneous petitions pending consideration, if any, in this case, shall stand closed. No order as to costs.

11.12.2017
SS

P.NAVEEN RAO, J

